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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, upon consideration of Respondent Michael Long's June 10, 2024 Motion to Dismiss, the Motion is hereby DENIED.

\_\_\_\_\_  
, J.

J. Chadwick Schnee, Esquire (PA 306907)  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
(717) 400-5955  
Fax: (717) 882-5271  
chadwick@schneelegal.com

*Attorney for Petitioner*

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-10559

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**RESPONSE TO RESPONDENT’S JUNE 10, 2024 MOTION TO DISMISS**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Response to Respondent’s June 10, 2024 Motion to Dismiss, averring as follows:

1. Denied as conclusions of law to which no responsive pleading is required.
2. Denied. On November 3, 2023, the Office of Open Records (“OOR”) issued a final determination in *Michael Long v. Borough of Bath*, OOR Dkt. AP 2023-1598 that only partially granted Respondent’s Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, appeal.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted in part and denied in part. As the decision to partially deny reconsideration was itself an appealable final order, the Borough, on December 27, 2023, timely appealed from the OOR’s final order partially denying reconsideration. The remaining averments of this paragraph are specifically denied.

7. Admitted.
8. Denied as a conclusion of law to which no responsive pleading is required.
9. Denied as a conclusion of law to which no responsive pleading is required.
10. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, page 1040 does not exist in *Hionis v. Concord Twp.*, 973 A.2d 1030 (Pa. Commw. 2009), and *Hionis* was issued by the Commonwealth Court, rather than, as alleged by Respondent, the Superior Court.
11. Denied as a conclusion of law to which no responsive pleading is required.
12. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, pursuant to Pa.R.A.P. 103, the Rules of Appellate Procedure do not apply to county courts of common pleas. *See also Chambersburg Area Sch. Dist. v. Dorsey*, No. 2012-849 (C.P. Franklin May 18, 2012) (Walsh, J.) (noting, in the context of a Right-to-Know Law appeal, that neither the Rules of Civil Procedure nor the Rules of Appellate Procedure apply), *aff'd* 97 A.3d 1281 (Pa. Commw. 2014).
13. Denied. The purported case cited by Respondent, “*Sossong v. Shinseki*, 63 A.3d 858, 862 (Pa. Commw. Ct. 2013),” does not exist based on Petitioner’s research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.
14. Denied as a conclusion of law to which no responsive pleading is required.
15. Denied as a conclusion of law to which no responsive pleading is required.
16. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, the Rules of Civil Procedure do not apply to statutory appeals. *See Borough of*

*W. Easton v. Mezzacappa*, 74 A.3d 417, 420 (Pa. Commw. 2013) (“The Pennsylvania Rules of Civil Procedure do not apply to statutory appeals, such as an appeal under the RTKL”); *Allegheny Cnty. Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1033 (Pa. Commw. 2011). Nevertheless, Petitioner properly served Respondent with its appeal.

17. Denied. The case cited here by Respondent, *City of Philadelphia v. Frempong*, 865 A.2d 314 (Pa. Commw. 2005), does not discuss service at all, let alone by certified mail.

18. Denied. The purported case cited by Respondent, “*Wilco Elec. v. Weco, Inc.*, 586 A.2d 956, 958 (Pa. Super. Ct. 1991),” does not exist based on Petitioner’s research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

19. Denied as a conclusion of law to which no responsive pleading is required.

20. Denied. The purported case cited by Respondent, “*Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 536 A.2d 515, 518 (Pa. Commw. Ct. 1988),”<sup>1</sup> does not exist based on Petitioner’s research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

21. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, by filing an answer to the Petition for Review, Respondent has waived any objections to service.

22. Denied. The Borough did not “substantially compl[y] with the service requirements;” instead, the Borough fully complied by serving Respondent with its Petition for

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<sup>1</sup> There is a similarly-named case, *Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 113 A.3d 1261, 1273 (Pa. Super. 2015); however, this case specifically held that an argument regarding service was waived.

Review. By way of further answer, the case cited here by Respondent, *City of Philadelphia v. Frempong*, 865 A.2d 314 (Pa. Commw. 2005), does not discuss service at all, let alone by certified mail. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

23. Denied. The purported case cited by Respondent, “*Frychlund v. Way*, 15 A.3d 521, 525 (Pa. Commw. Ct. 2011),” does not exist based on Petitioner’s research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

24. Denied as a conclusion of law to which no responsive pleading is required.

25. Denied as a conclusion of law to which no responsive pleading is required.

26. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, *Pennsylvania Dep't of Educ. v. Bagwell*, 131 A.3d 638 (Pa. Commw. 2015) does not involve a partial denial of a request for reconsideration.

27. Denied. The decision in *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013) involves the proper standard and scope of review in reviewing final determinations issued by appeals officers under the RTKL and is a writing that speaks for itself. While an “administrative agency” has discretion in handling RTKL requests, such decisions are first heard by appeals officers before being heard by reviewing courts. In this paragraph, Respondent appears to conflate the discretion afforded to agencies reviewing their own records to the ability for the OOR to grant reconsideration of final determinations it issues.

28. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, under *Bowling*, this Court's standard of review is *de novo*, meaning that the OOR's final order denying reconsideration is afforded no deference.

29. Denied. The Borough has not made the argument postulated by Respondent. By way of further answer, the appeal of the first final determination was timely made on December 1, 2023, as it was made within 30 days of the underlying final determination. The appeal of the final determination partially denying reconsideration is also timely in that it was filed within 30 days of when reconsideration was partially denied.

30. Admitted in part and denied in part. It is admitted that the Borough filed an appeal of the original final order after reconsideration was partially denied in order to preserve its appeal rights for the portion of the final order over which the OOR did not grant reconsideration. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

31. Denied. The purported case cited by Respondent, "*Sulli v. Zoning Hearing Bd. of Moosic Borough*, 604 A.2d 776, 778 (Pa. Commw. Ct. 1992)," does not exist based on Petitioner's research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

32. Denied. The Borough's Petition for Review in the instant matter is a written document that speaks for itself, and any characterization thereof is specifically denied. By way of further answer, the two separate appeals were for separate purposes – the first was to preserve appeal rights as to the portion of the final determination over which the OOR denied reconsideration; and the second was to challenge the denial of reconsideration.

33. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, Respondent's appeal in this matter was filed within 30 days of the OOR's final order partially denying reconsideration and, accordingly, is timely.

34. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, pursuant to Pa.R.A.P. 103, the Rules of Appellate Procedure do not apply to county courts of common pleas. *See also Dorsey, supra.*

35. Denied as a conclusion of law to which no responsive pleading is required.

36. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, as the praecipe and certificate of readiness merely seek a pretrial conference, Respondent's opposition thereto is dilatory in nature, warranting sanctions.

37. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, as this matter is a statutory appeal, the Rules of Civil Procedure do not apply, *see Mezzacappa, supra*, and, as a result, preliminary objections are inappropriate. Additionally, as the praecipe and certificate of readiness merely seek a pretrial conference, Respondent's opposition thereto is dilatory in nature, warranting sanctions.

38. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, as this matter is a statutory appeal, the Rules of Civil Procedure do not apply, *see Mezzacappa, supra*, and, as a result, preliminary objections are inappropriate. Additionally, as the praecipe and certificate of readiness merely seek a pretrial conference, Respondent's opposition thereto is dilatory in nature, warranting sanctions.

39. Denied. The purported case cited by Respondent, "*Thompson v. Cortese*, 41 A.3d 855, 860 (Pa. Commw. Ct. 2012)," does not exist based on Petitioner's research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to

this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

40. Denied as a conclusion of law to which no responsive pleading is required. By way of further answer, Respondent appears to be arguing that discovery should be had in a statutory appeal as to a jurisdictional issue. Such an argument plainly lacks merit.

41. Denied. The Borough did not “substantially compl[y] with the requirements for filing a praecipe of readiness;” instead, the Borough fully complied with this Court’s local rules. By way of further answer, the case cited here by Respondent, *City of Philadelphia v. Frempong*, 865 A.2d 314 (Pa. Commw. 2005), has nothing to do with the proposition for which it is cited. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

42. Denied. The purported case cited by Respondent, “*Frychlund v. Way*, 15 A.3d 521, 525 (Pa. Commw. Ct. 2011),” does not exist based on Petitioner’s research. Sanctions should be imposed on Respondent as a result of his vexatious use of false citations that he represents to this Court as accurate. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

43. It is admitted that Respondent seeks relief; however, it is denied that Respondent is entitled to any of the relief sought. The remaining averments are denied as conclusions of law to which no responsive pleading is required.

**WHEREFORE**, Petitioner respectfully ask this Honorable Court to deny Respondent’s June 10, 2024 Motion to Dismiss.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC



By: \_\_\_\_\_

J. Chadwick Schnee, Esquire  
PA Attorney ID 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
Lititz, PA 17543  
Phone: 717-400-5955  
Fax: 717-882-5271  
chadwick@schneelegal.com

Dated: June 11, 2024

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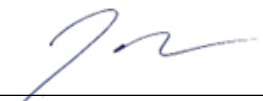
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**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 11<sup>th</sup> day of June, 2024, I have served a true and correct copy of the attached Response to Motion to Dismiss for Lack of Jurisdiction on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*

  
\_\_\_\_\_  
J. Chadwick Schnee, Esq.